

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SOLOMAN STEVE KENNEDY

PETITIONER

V.

CIVIL ACTION NO. 3:21-CV-231-KHJ-MTP

BURL CAIN

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Michael T. Parker. [19]. That Report recommends that the Court GRANT Respondent's Motion to Dismiss [11], and the Petition [1] be DISMISSED without prejudice. Written objections to the Report were due by July 8, 2021. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. [19] at 4. Petitioner Soloman Steve Kennedy has filed no timely objection.¹

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.").

¹ Kennedy has filed a Motion for Conflicion [20], which complains about prison officials but does not mention the Magistrate's Report or the bases for his original Petition. Because the Court adopts the Report and dismisses Kennedy's case without prejudice, this motion is denied as moot.

In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Kennedy challenges his conviction for possession of a firearm by a felon under 28 U.S.C. § 2244. [19] at 1. The Magistrate Judge entered his Report and Recommendation, finding Kennedy failed to exhaust state remedies as required by 28 U.S.C. § 2254. *Id.* at 3. He further found that Kennedy’s case does not fit the “limited circumstances” where a federal court is allowed to hold a case in abeyance until state remedies are exhausted. *Id.* at 4. Accordingly, the Report recommends granting Respondent’s Motion to Dismiss [11], and dismissing the case without prejudice. *Id.* at 4-5.

After review of the record, the Court, being fully advised in the premises, finds that the Report and Recommendation is neither clearly erroneous nor contrary to law, and should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [19] of United States Magistrate Michael T. Parker, entered in this cause should be, and the same is, adopted as the finding of this Court. Respondent’s Motion to Dismiss [11] is GRANTED, and Kennedy’s Petition for Writ of Habeas Corpus [1] is DENIED. This action is DISMISSED. Because the case is dismissed for failure to exhaust, this dismissal shall be WITHOUT PREJUDICE.

A separate Final Judgment shall issue this day.

SO ORDERED, this the 2nd day of August, 2021.

s/ *Kristi H. Johnson*

UNITED STATES DISTRICT JUDGE